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## Human Rights Guarantees in Commercial Contracts in “Ifriqiya” during the Time of the Jurist Al Maziri: A Historical Study through His “Fatwas”

ATTIA F. ELWISHY/KHALID TALAHMA

**Abstract** ‘Fatwas’ are non-binding legal opinions on a point of Islamic law (sharia) by a qualified jurist in response to variant issues of a society, including that of respecting human rights in commercial transactions. The renowned jurist, Al Maziri, had reconditioned the Maliki ‘fatwas’ concerned with the lives of people in African countries during his era. This contributed to restoring the value of the contract and its legislative content, which provided guarantees and rights to the contracting parties in commercial transactions. Since ‘fatwas’ are responses to societal issues, they act as a reflective mirror of the changes to such issues over time and decades. This historical study, based on a set of jurisprudential and historical sources, aims to identify the extent of Al Maziri’s influence through his ‘fatwas’ on adjusting commercial transactions in African countries during his time.

**Keywords** Fatwas, Islamic law (sharia), Maliki School of Jurisprudence, Nawazil (new issues of transactions), The market values in Islam

### Menschenrechtsgarantien in Handelsverträgen in „Ifriqiya“ während der Zeit des Juristen Al Maziri: Eine historische Studie zu seinen „Fatwas“

**Abstract** ‚Fatwas‘ sind rechtlich nicht bindende Stellungnahmen durch einen qualifizierten Juristen zu einem Aspekt des islamischen Rechts (Scharia) als Antwort auf verschiedene Fragen einer Gesellschaft, einschließlich der Achtung der Menschenrechte bei Handelsgeschäften. Der renommierte Jurist Al Maziri hat die malikischen Fatwas, die sich mit dem Leben der Menschen in afrikanischen Ländern während seiner Ära befassten, überarbeitet. Damit trug er dazu bei, den Wert des Vertrags und seinen legislativen Inhalt wiederherzustellen, der den Vertragsparteien Garantien und Rechte bei Handelsgeschäften gewährte. Da Fatwas Antworten auf gesellschaftliche Fragen geben, fungieren sie als Spiegel der Veränderungen, die sich im Laufe der Zeit und der Jahrzehnte in diesen Fragen vollzogen haben. Diese historische Studie, die sich auf eine Reihe von rechtswissenschaftlichen und historischen Quellen stützt, zielt darauf ab, das Ausmaß von Al Maziris Einfluss durch seine Fatwas auf die Anpassung von Handelstransaktionen in afrikanischen Ländern zu ermitteln. Darüber hinaus zeigt diese Studie den Wert der Fatwas bei der Bereitstellung rechtlicher Rahmenbedingungen auf.

**Keywords** Fatwas, Islamisches Recht (Scharia), Malikische Schule des Rechts, Nawazil (neue Arten von Geschäften), Marktwerte im Islam

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## 1 Introduction

Human rights in business are currently an issue that concerns most of the international community. However, existing literature barely looks into business and human rights in the context of Islamic Law, bearing in mind the major differences between other perspectives in Civil Law and Common Law countries. Several studies have been conducted on human rights in business and transnational cooperation, and the different violations of human rights in business. However, rarely do these studies cover Islamic law's perspective on this matter.

The terminology of Islamic Law in this study refers to the system of laws and legislation derived from the Qur'an (the holy book for Muslims), Sunnah (teachings of the Muslim prophet Muhammad), and the opinions of jurists, in matters related to transactions, ethics, and different life systems. The system of legislation has evolved extensively throughout the ages as a result of jurists' responses to the variant developments in life. This aided in the addition of flexibility features in such legislation to suit the requirements of each era in a manner that serves the interest of both individuals and societies as a whole.

Among the key multiple stages important to the development of the sources of Islamic law are the events subsequent to the mid-eleventh century AD, as African countries had gone through a pivotal and unique political, social and cultural transformation throughout their medieval history. This massive political transformation had led to fundamental changes across the various social, economic, cultural and other tracks in Africa. This had been reflected through the change of balance in military forces in the Mediterranean basin that Africa borders, the change in political systems and their doctrinal references, and the reformation of economic forces and their influence on the construction of new patterns in business transactions in African markets.

In the midst of all noted transformations, this study aims to examine the extent of the impact of new conditions on the movement of economic activity and their effects on the environment of commercial transactions in African markets. This study also monitors the extent of the influence of the Maliki culture, one derived from Islamic law, through the fatwas of the jurist Al Maziri, in rationalizing the movement of commercial transactions, and providing human rights guarantees in commercial transaction contracts. His fatwas were able to do this through bounding commercial transaction contracts with a set of considerations that reinforced the notions of justice and interests in particular. The study also focuses on demonstrating the keenness of Al Maziri to highlight the human rights and guarantees that are consequent to such contracts. This was established in accordance with the provisions of Islamic Sharia through his answers to inquiries regarding the conditions and format of transaction contracts.

The reasons behind choosing the specific fatwas<sup>1</sup> of Al Maziri the jurist, as well his era, as indicators of the nature and application of human rights in commercial contracts in fatwas in general, are the following:

- a) The fatwas of Al Maziri are indicative legislation that is widely respected among people; on the other hand, these fatwas had a clear effect as constituting texts to

1 "Fatwas" are non-binding legal opinions on a point of Islamic law (sharia) by a qualified jurist, in response to variant issues of a society, including that of respecting human rights in commercial transactions.

rights and guarantees in commercial transaction contracts during the period in which Al Maziri lived (1061: 1141 AD).

- b) Al Maziri is the last of the African elders to achieve jurisprudence and the degree of diligence “Ijtihad”<sup>2</sup>. In addition, the era during which Al Maziri lived in African countries marked the beginning of what is known as scientific fatwas that reflected the reality of people’s lives, also known as: “Fatwa Al Nawzil”.
- c) Al Maziri was a known figure to the public.<sup>3</sup> This advantage is reflected in his experiences with historical facts and events that aided him in the use of measurement and representation. Moreover, this contributes to the validity of his outlooks and rational judgments on futuristic matters. This is reflected in the quality of human rights guarantees in commercial transaction contracts that were deduced through his jurisprudence and fatwa opinions.
- d) Al Maziri’s fatwas on issues relating to commercial transaction contracts were abided by in Africa and in the countries of the Maghreb. This is due to his scientific status during his era and even after. In addition, the credibility of Al Maziri stems from his saying: “My answers are dictated through my writings”. This demonstrates his keenness to document his answers to inquiries regarding human rights issues in contracts of transactions.<sup>4</sup> The documentation of his legal opinions contributed to strengthening opinions obligatory nature to the contracting parties.
- e) Al Maziri’s fatwas are one of the most important pieces of historical evidence that measure the availability of standards guaranteeing human rights in financial transactions in his era. In addition, Al Nawzil reflects the extent of the influence of the jurist in various legal and economic aspects throughout the history of Africa and the countries of Maghreb.
- f) In general, the choice of Al Maziri’s fatwas is due to the capacity they possess in the juristic field, which is also identified in the historical readings of that era specifically through the books on “Fatwa Al Nawzil”.

This study sought fatwas as historical reflective mirrors to the commercial transactions and an economic activity system through the multiple inquiries posed by those working in such fields. In return, these fatwas were able to convey a true historical picture, characterized by great credibility in its expression of the quality of economic activities and the movement of commercial transactions and the values associated with this movement during that historical period covered by the study.

2 Hasan Hosni Abdul Wahab, Imam Al Maziri, Tunisia 1955, Vol. 1, pp. 57–58.

3 Shihab-ud-Din Ahmad ibn Mohammad ibn Ahmad ibn Yahya, Abu Abbas Al Moqri At-Tilmesani (died in 1041AH – 1632 AD): Azhar Ar-Riyad Fi Akhbar Al Qadi `Iyad, verified by: Mustafa As-Saqa Ibrahim Al Ibiari and Abdul-`Azhim Shalabi, Authoring, Translation and Publishing Commission Print House, Cairo 1358 AH/1939, Vol. 3, p. 29.

4 Ahmad ibn Yahia Al Wansharisi (died in 914 AH – 1508 AD): Al Mi`yar Al Mu`rab wal Jami` Al Mughrab `An Fatawa Ahl Ifriqiya, Andalus wal-Maghreb, reported by: A group of scholars under the supervision of Mohammad Haji, the Ministry of Awqaf and Islamic Affairs of the Kingdom of Morocco, Rabat, published the link in 1401 AH/1981, Vol. 4, pp. 385 f.

### 1.1 Statement of Problem

The study seeks to determine the extent to which Islamic jurists in Africa were keen to provide human rights guarantees in texts that established all of the commercial transaction contracts, through their fatwas that are derived from Islamic Sharia. The choice was made to study the jurist Al Maziri and his era because it is the era that followed the doctrinal shift in Africa from Shiite jurisprudence to Maliki jurisprudence. Hence, it was pivotal to understand the extent of this jurisprudence's transformation influence on commercial transaction contracts, as well as the degree of human rights guarantees availability, whether in constituting texts or amendments made to them.

### 1.2 Study Methodology

The study has adopted the historical methodology. This methodology was used to monitor the conditions of commercial transactions, their development and the effect of jurists in rationalizing the movement of trade markets. This has been done through new juristic visions as a response to the sectarian shift in African countries, and Al-Maliki jurisprudence's abilities to withstand the political, economic and social changes.

Among the historical resources this study relied upon and utilized was the delicate and specific focus on the fatwas of Al Maziri regarding inquiries and responses to commercial transaction contracts.

### 1.3 Study Structure

The subject of the study was explored after methodological introductory paragraphs that introduced the jurist Al Maziri and an indicative definition of commercial transaction contracts. The study is divided into six main axes. The first axis deals with the guarantees of rights in the fatwas of commercial contracts during Al Maziri's era. As for the second axis, it demonstrates Al Maziri's interest in human rights in commercial transaction contracts, and their role in organizing the implementation and control processes of contracts. The third axis focuses on the issue of the guarantor reserve for fraud and deception in the contracts of transactions during Al Maziri's era. Moreover, the fourth axis covers the legal guarantees in Maziri's future contracts. The fifth axis deals with the subject of agency and its guarantees in commercial transaction contracts. As for the sixth and final axis, it focuses on the conception of human rights guarantees in emergency commercial contracts.

The study concludes with a set of historical summaries related to human rights guarantees in trade contracts and commercial transactions, which were included in the fatwas of the jurist Al Maziri during his tenure.



## 2 The Profile of Al Maziri and his Scholarly Life (453: 536 AH/1061: 1141 AD)

### 2.1 His Birth and Upbringing

Mohammad Abu Abdullah ibn Ali ibn Omar At-Tamimi Al Maziri<sup>5</sup> Al Mahdawi<sup>6</sup> was born in 1061 AD. According to sources, it is likely that Al Maziri's family left Sicily for Ifriqiya with the harbingers of changing the political conditions in Sicily for the Normans. Studies show that after their departure from Sicily, Al Maziri's family settled in the city of Mahdia, a young city that became the center of science and scholars in all respects, being the base of the Benu Ziri of the Sanhajids<sup>7</sup>.

### 2.2 Life of Al Maziri and his Scholarly Status

Studies show that Al Maziri had an “early scholarly life. He said about himself that he sat with scholars since his boyhood, i. e., when he was about ten years or more. He met the senior scholars of his time. He was proud that he saw the senior verifiers of his time who had experience and virtue, who combined knowledge and action. He was active in asking and learning from them. He was also fond of the books of various opinions, perusing the books of fundamentalists, and discussing their views on scholarly issues.”<sup>8</sup>

Al Maziri had been a student of a group of sheikhs, from whom he received the science of jurisprudence and Fatwas.

Al Maziri was Ash`ari<sup>9</sup> and used to see that “man acquires his actions, he is not forced to do them”<sup>10</sup>. Perhaps that tendency has strengthened the link between his fatwas and controlling the general context of the living transaction reality between people of his time, especially in the field of commercial transactions.

He died on Monday the 8<sup>th</sup> of the Rabi I, corresponding to the 21<sup>st</sup> or 11<sup>th</sup> of October 1141 AD, in Mahdia at the age of eighty-three, and was buried in Monastir.<sup>11</sup>

5 Attributed to Mazara or Mazira, which is a small town in Sicily full of markets, trades and manufactures. It was the crossroad of Sicily coastal and interior cities (Abu Ubaid Abdullah ibn Abdul-`Aziz ibn Mohammad Al Bakri Al Andalusi (1094 AD): *Al Masalik wal-Mamalik* (Tracts and Kingdoms), Dar Al-Gharb Al-Islamy, Beirut 1992 AD, Vol. 1, pp. 485–488; Al Sharif Al Idrisi: *Nuzhat Al Mushtaq fi Ikhtiraq Al Afaq* (Picnic of the longing in penetrating the horizons), Vol. 2, p. 623; Ahmad ibn Mohammad ibn Ibrahim ibn Abu Bakr Ibn Khillikan Al Barmaki Al Irbali (1282 AD): *Wafiyat Al A`yan wa Anba` Abna` Az-Zaman* (Senate deaths and the news of the people of the time, verified by Ihsan Abbas, Dar Sadir, Beirut 1971 AD, Vol. 4, p. 285).

6 Attributed to his town Mahdia, and to distinguish him from those who carried the same name and nickname (Iyad Al Qadhi ibn Musa ibn Iyad ibn `Amrun Al Yahsabi As-Sabti (1149 AD): *Tartib Al Madarik wataqreeb Al Masalik* (Arrangement of perceptions and approximation of tracts), Al Maktaba Al Atiqah and Dar At-Turath, Tunisia and Cairo, Dr. T, Vol. 8, p. 105; Mohammad ibn Abdullah ibn Abu Bakr Al Quda`i Al Balansi Ibn Al Abbar (1172 and 1173 AD): *Mu`jam Ashab Al Qadi Abu Ali As-Sadafi* (Dictionary of the companions of the judge, Abu Ali Al Sadafi, Library of Religious Culture, Egypt, 2000 AD, Vol. 1, pp. 196–295).

7 Yaqut Al Hamawi, Yaqut ibn Abdullah Ar-Rumi Al Hamawi, Vol. 6, p. 2636.

8 Abdul-Hamid `Ash-shaq: Imam Al Maziri (1141 AD) was a Mujtahid in the Maliki School of Fiqh, Center for Studies, Research and Heritage Revival of the Mohammadia Association of Scholars, Rabat 2012 AD, p. 50 ff.

9 Al Wansharisi, *Al Mi`yar Al Mu`rib*, Vol. 2, p. 134.

10 Abu Abdullah Al Maziri, *Al Mu`lim Bifawa'id Muslim* (Notifier of Imam Muslim's comments) Vol. 3, p. 310.

11 Ibn Khillikan, *Wafiyat Al A`yan wa Anba` Abna` Az-Zaman* (Senate deaths and the news of the people of the time, vol. 4, p. 285. Al Miqri: *Azhar Ar-Riyad Fi Akhbar Al Qadi Iyad*, Vol. 3, p. 166.



### 3 The Concept of Sales Contracts in Commercial Transactions

Moroccan jurists of the Maliki School indicated that Al Maziri provided special rules for the commercial sale of Goods.<sup>12</sup> Commercial transactions “sales” mean in the jurisprudence of Al Maziri giving and holding in hand<sup>13</sup> and the transactions of commercial sales in this description are a contractual relationship that requires four pillars: “Two contracting parties, price, commodity, and the contract”<sup>14</sup>.

Historically, the idea of commercial contracts in the Maliki School of Fiqh in the Maghreb in terms of the principle is based on considering “the section of sales is one of the issues that must be paid attention and their provisions must be known because they are generally needed, since all legally competent persons should sell or purchase. So, it was a must to know the judgment of Allah in this type of sale before doing it, because the Maliki believed that sales is a type of contract that shows the quality of a scholar”<sup>15</sup>.

### 4 Guarantees of Rights in the Fatwas of Commercial Contracts during the Time of Al Maziri

#### 4.1 Political Influences on Ifriqiyān Commercial Contracts in the time of Al Maziri

Some new issues indicated the serious consequences of the invasion of Banu Hilal<sup>16</sup> on the country’s economy, namely price fluctuations, extortion and looting. A trader of wheat, barley, and oil feared becoming a monopolist against his will or forcibly.<sup>17</sup>

During the time of Al Maziri, the impact of the sabotage campaigns, which the Bedouins waged most of their days, was felt, usurping the lands and houses of the people of Ifriqiya. People were unable to go out to plow or collect olive and other agricultural crops.<sup>18</sup> That problem led to a lack of sustenance and scarcity of food, threatening poverty and famine. That, in turn, contributed to the activation of trade with Sicily to make deals to buy food and provide sustenance for the people of Ifriqiya.<sup>19</sup>

Al Maziri abolished trade deals where foodstuffs were brought from Sicily to Ifriqiya, arguing that reviving their economy with our great money would support them in their fight against Muslims, the conquest of their lands and spending their dividends to repair the Ro-

12 Abu Al Qasim Balburzuli: *Jami’ Masa’il Al Ahkam Lima Nazala mina Al Qadaya bilmufteen wal-Hukkam* (Collection of judgments for issues offered to Muftis and rulers), Vol. 3, p. 9.

13 *Id.*, p. 5.

14 *Id.*, p. 10.

15 Mohammad ibn Mohammad ibn Abdur-Rahman At-Trabulsi Al Maghribi, known as Al Hattab Ar-Ru’ayni Al Maliki (1547 AD): *Mawahib Al Jalil fi Sharh Mukhtasar Khalil* (Talents of the revered in explaining the brief of Khalil), Dar Al-Fikr, Beirut 1992 AD, 3rd ed., Vol. 4, p. 221.

16 One of the Arabic tribes that had immigrated from Al Hijaz country in that era to Egypt, and then they immigrated to African countries, in which they have affected it negatively (Omar rida kahalaa: dictionary of Arabic tribes, daralelm for millions. Bierut, /1968 AD, part 3, p. 287).

17 Al Wansharisi, a. a. O. (Fn. 9), p. 269; Hasan Hosni Abdul-Wahab Vol. 2, p. 226.

18 Al Wansharisi, a. a. O. (Fn. 9), Vol. 6, p. 307.

19 Al Burzuli, *Jami’ Al Masa’il Wal-Ahkam* (Collection of issues and judgments), Vol. 3, p. 157.

man frontiers that harmed Muslims in Ifriqiya.<sup>20</sup> In addition, the purchase of foodstuffs and sustenance from the fighting enemy implies insult and humiliation to Muslims.<sup>21</sup>

That seemed strange, especially since Al Maziri had observed *Ijtihad* and measured the case of fetching food from Sicily to the case that the people of Makkah were explicitly forbidden by the Quran to allow non-Muslims to enter Makkah, no matter if the people of Makkah needed them. That analogical deduction needed reconsideration, especially since Muslim traders were travelling to Sicily to fetch foodstuffs, so perhaps there was no need to give such a fatwa preventing travel. However, some sources revealed the fundamental reason for the fatwa of Al Maziri, which forbade making this commercial deal, through his explanation that: "Although we use their foodstuffs as a support to us, the money of Muslims we give will turn against us and enable them to overpower Muslims"<sup>22</sup>.

Despite the consensus of scholars on the validity of Al Marizi's fatwa, historical or jurisprudential sources, unfortunately, did not disclose the alternative measures they took at that time in order to provide sustenance and food for the people.

In the same context, Al Maziri adopted the view of prohibiting commercial contracts that include arms deals for enemies and tools of war, such as weapons, horses, mules and donkeys because they will carry them wherever they want. The prohibition also covered copper and iron, because of the fact that iron would be used in manufacturing weapons and such and copper would be used in manufacturing trumpets and bells. He also prohibited the selling of wax since the enemy used it in battleships and such<sup>23</sup> and because that would strengthen the enemy in times of truce, peace or war<sup>24</sup>. Perhaps taking account of these reasons for prohibition explained by Al Maziri would block the way of any threat to a person through wars and conflicts.

#### 4.2 Human rights in commercial contracts between accomplishment and receipt

The contracting parties would avoid any forgetfulness, error, theft or anything of the like. So, the transaction would be concluded by finished agreements and could not be nullified according to the consensus of scholars. The entire transaction should have been nullified because corruption had reached some of them and affected the rest<sup>25</sup>, but Al Maziri continued by saying: It is permissible if the deferred (the rest) is the lesser portion of the transaction. However, if the delayed portion is the bigger part of the transaction, the sale shall be nullified according to the consensus.<sup>26</sup> By this, he conditioned accomplishment<sup>27</sup> in contracts,

20 Mohammad ibn Ali ibn Omar At-Tamimi Al Maziri Al Maliki (1142 AD), *Sharh At-Talqin* (Explain of At-Talqin Book), verified by Muhammad Al Mukhtar As-Salami, Dar Al-Gharb Al-Islamy, Beirut 2008, Vol. 2, p. 934.

21 *Ibid.*

22 *Id.*, pp. 934 f.

23 *Id.*, pp. 935 f.

24 *Id.*, p. 936; Abu Ishaq Ibrahim ibn Musa Ash-Shatiby Al Andalusi (1388 AD): *Fatwas of Imam Ash-Shatiby*, verified and presented by Mohammad Abu Al Ajfan, verifier's edition, 1406 AH/1985 AD, 2<sup>nd</sup> ed., pp. 145 f.

25 Khalil ibn Ishaq: *At-Tawdih fi Sharh Al Mukhtasar Al Far'y* (Explanation of the abridged book) of Ibn Al Hajib, verified by Ahmad ibn Abdul-Karim Naguib, Naguibouh Center for Manuscripts and Heritage Service, Cairo, Vol. 5, pp. 267 f.

26 *Ibid.*

27 Al Munajazah linguistically is taken from An-Najz, which is accelerating. In the terms of the Maliki School of Fiqh, it is: Receiving the value for the contract (Abdullah Mu'asar: *Taqreeb Mu'jam Al Fiqh Al Maliki* (Simplifying the glossary of Maliki Fiqh Terms), Dar Al-Kotob Al-'Ilmiyyah, Beirut 2007 AD, p. 130.

because if the sales contract includes the condition of payment to accomplish the contract, it would lead to the loss of rights between the parties of the transaction or the sale at most.

In all cases, the following is part of the guarantee of rights in commercial contracts: Contracts should be based on accomplishment and receipt, because what has been received is naturally guaranteed, so if accomplishment is done and the transaction is completed, guarantee will surely follow it.<sup>28</sup> If the custom entails that the sale is just a contract, guarantee will force the seller to hand over the commodity because the real sale has been made, then the purchaser would be forced to pay the price for which he concluded the contract. Some forms of guaranteeing receipt in the time of Al Maziri were that the buyer had to take the price out of his possession in cash or weight then stretch his hand to the seller and the seller would hand over the commodity to him and each one receives his due.<sup>29</sup>

In order to guarantee the rights, the most prominent meanings of accomplishment and receipt in commercial contracts were: "If the contract is made to sell a commodity for a commodity, they should be received at the same time, because there is no advantage to one of them over the other"<sup>30</sup>. Al Maziri settled the dialectic of sales contracts in commercial transactions by saying: "Is selling represented in the contract or the receipt of the commodity?" He decided that: "Only habits and the objectives are considered"<sup>31</sup>.

#### 4.3 Precautionary guarantees to prevent fraud and deception in commercial contracts during the time of Al Maziri

The idea of explicit agreement between the parties was one of the conditions that blocks the pretexts of fraud and deception in commercial contracts. One of the controls of sales' contracts and the guarantees of the contracts' validity in the view of the Malikis in the time of Al Maziri was: The form indicating the satisfaction of the contracting parties is conditioned in contracts, and taking and giving is a means that may suffice, since taking and giving in contracts serve as an explicit saying.<sup>32</sup> Therefore, markets in the time of Al Maziri were often active in concluding various commercial contracts and bargains.

It was part of the jurisprudence of Al Maziri to respect the guarantee of human rights in commercial contracts.<sup>33</sup> He established his view on the basis that the corruption of the sale of option<sup>34</sup>

28 Al Maziri, *Sharh At-Talqin* (Explanation of indoctrination), Vol. 2, p. 180.

29 *Id.*, p. 84.

30 *Id.*, p. 86.

31 *Id.*, p. 95.

32 'Iyad ibn Musa ibn 'Iyad ibn 'Amrun Al Yahsabi As-Sabti (1149 AD), *Ikmal Al Mu'lim Bifawa'id Muslim* (Supplementing the notifier with the issues of Muslim), verified by Dr. Yehia Ismail, Dar El Wafaa for Printing, Publishing and Distribution, Egypt 1998 AD, Vol. 3, p. 293; Al Wansharisi, *Al Mi'yar Al Mu'rib*, Vol. 5, pp. 200–202.

33 At-Tawdih fi Sharh Al Mukhtasar Al Far'y (Explanation of the abridged book) of Ibn Al Hajib, Vol. 5, p. 420.

34 The meaning of option in the terminology of the study that the contracting parties are in a space of choice to accept or leave the contract (Nazih Hammad, *Mu'jam Al Mustalahat Al Maliyah wal-Iqtisadiyyah fi Lughat Al Fuqaha'* (Dictionary of financial and economic terminology in the language of jurists), Dar Al-Qalam, Damascus 2008 AD, p. 202; Defect option according to the Malikis, It is due to a defection in the sold commodity or entitlement, and is also called judgmental. It is also called: Deficiency Option: Sa'di Abu Habib, *Al Qamus Al Fiqhi Lughatan wastilahan*, Jurisprudential Dictionary in language and terminology, Dar al-Fikr, Damascus 1988 AD, 2<sup>nd</sup> ed., p. 126.

is because of deception,<sup>35</sup> therefore Al Maziri had a juristic view based on the prohibition of the deception sale,<sup>36</sup> because deception implies wasting the rights of people, and making guarantees for such sales leads to delusion and deception<sup>37</sup>.

With regard to the issue of fraud in sales, one of the descriptions of deception according to Al Maziri is that: The sale is neither good nor bad.<sup>38</sup> However, he sometimes gave a fatwa regarding the permissibility of slight unintentional deception based on the permissibility of selling the fruit after it had become nearly ripe, even though the defect is expected.<sup>39</sup> He issued a fatwa according to the fact that whoever bought fruitful orchards that were then hit by a pandemic, if that happened in one transaction, one third of the fruits would be considered defective, but if that happened in different transactions, one third of each transaction would be defective. If there is a dispute: Shall the contract be concluded more than one time if the commodity has changed or not?<sup>40</sup> Receiving the contracted amount of the commodity was completed, but the defect occurred in the description of the commodity, therefore the buyer may accept it like all other defects.<sup>41</sup> Hence, he held the view that the transaction is correct, taking into account the defective part and the rights of the contracting parties.

In the same context, historical sources indicated that a form of commercial contracts called the contract of sale by chance, or risk, which is contracting to sell a commodity that is unknown in terms of weight or measure had been popularized in the time of Al Maziri. So, he gave a fatwa that such a sale is prohibited, taking into account the right of the Bedouin seller who does not know the conditions of the urban markets or their price fluctuations. Thus, the contract of the sale by chance entails injustice, and the general rule is an urban person should not purchase from a Bedouin.<sup>42</sup>

One of the most important things Al Maziri cared for in the contracts of commercial transactions was to negate the description of (by chance). He said that it is not enough in sales bargains that "the seller would be knowledgeable of the amount of the commodity", but also the purchaser should be knowledgeable of the amount he would buy, so the commodity would be known in terms of the weight or measurement. Therefore, Al Maziri stated the general rule of the Sharia entails the prohibition of the sale of something by an urban person to a Bedouin because of sale by chance if the Bedouin lacks the knowledge of the weight.<sup>43</sup>

35 Al Hattab Ar-Ru'ayni, *Mawahib Al Jalil fi Sharh Mukhtasar Khalil*, Talents of the revered in explaining the brief of Khalil, 3<sup>rd</sup> ed., Vol. 4, p. 412.

36 Mohammad ibn Qasim Al Ansari/Abu Abdullah, Ar-Rassa', the Tunisian Maliki (1576 AD), *Al Hidaya Al Kafiya Ash-Shafiya Libayan Haqa'iq Al Imam Ibn 'Arafah Al Wafiyah* (Adequate healing guidance to explain the entire facts of Imam Ibn Arafah), Scientific Library, Tunisia 1350 AH, Vol. 1, p. 254.

37 Al Maziri, *Sharh At-Talqin* (Explanation of indoctrination), Vol. 1, part 3, p. 402; Al Maziri used to see that the reason of prohibition in the deception sale is: It is a kind of usurping people's money falsely, and for that reason, Al Maziri had reservations on the down payment: Al Wansharisi, *Al Mi'yar Al Mu'rib*, Vol. 6, p. 305.

38 Al Maziri, *Sharh At-Talqin* (Explanation of indoctrination), Vol. 3, part 2, p. 351.

39 Al Wansharisi, *Al Mi'yar Al Mu'rib*, Vol. 5, p. 226.

40 Qasim ibn Isa ibn Naji At-Tanukhi Al-Kairawani (1433 AD), *Sharh Ibn Naji At-Tanukhi 'Ala Matn Ar-Risalah* (Ibn Naji At-Tanukhi explanation on the text of the message) of Ibn Abu Zaid Al-Kairawani, Ahmad Farid Al Mazidi, *Dar Al-Kotob Al-'Ilmiyyah*, Beirut 2007 AD, Vol. 2, p. 202.

41 At-Tawdih fi Sharh Al Mukhtasar Al Far'y (Explanation of the abridged book) of Ibn Al Hajib, Vol. 5, p. 269.

42 Al Wansharisi, *Al Mi'yar Al Mu'rib*, Vol. 6, p. 297.

43 *Ibid*.

#### 4.4 Human Rights Guarantees in Future Contracts During the Time of Al Maziri:

When sales contracts of deferred price became widespread in Ifriqiyan cities and villages in the time of Al Maziri, some forms of repayment in commercial contracts were made by paying one third, one quarter, and so on. Some merchants used to mix the due dates because of the bad intention of creditors.

Al Wansharisi, a scholar of the 9<sup>th</sup><sup>44</sup> reported an incident related to future contracts, which Imam Abu Abdullah Al Maziri was asked about and he said: What you have to say in things which people were forced to do these days and necessities allow forbidden matters such as the dealings of the Bedouin, the poor and the needy in the years of famine and that they need food-stuffs, which they purchase in debt to the harvesters or delay it until they reap the palm trees. But when the time is due, they would say to their creditors: We only have food and we cannot afford to pay in gold, and they could be honest in that. The creditors would take their payment in wheat or dates and so on, for fear that if they would leave it in their hands, it would be wasted by eating because of their poverty.<sup>45</sup> There was no judiciary in the desert where merchant sellers could turn.<sup>46</sup> That was an indication of the tolerance of the Maliki school in such cases.<sup>47</sup>

According to a study, many commercial contracts were made on the basis of deferred payment without interest or increase. Some traders specialized in this type of trading in oils and grains.<sup>48</sup> Merchants of flax, cotton, butchers, olive oil, and wheat were paying their dirhams to money-changers, who later pledged to pay them in dinars. It seemed that those usurious operations, according to the Maliki jurisprudence, were unfortunately contracts whose forms had not been known. Those merchants did not pay the price of those goods or grains delivered to them by other merchants denominated in dinars, but paid instead by the debts owed by money-changers. The matter was done by transferring the debt to the account of others. The seller was the debtor and the assignor, and the supplier was the creditor and the assignee. However, the providers who did not always realize the payment method in the transfer were afraid not to receive gold for the goods they sold. Do we understand from this that the money-changers were borrowing the price of those goods in dirhams? On the other hand, most of those traders were poor and without protection.<sup>49</sup> That happened in an era when the emirs of the Sanhaja State in Mahdia used to run the maritime trade on their own, and these commercial operations were often duty-free.<sup>50</sup> This reflects the injustice of small traders who were not free to practise that type of trade.

44 Al Maziri, *Sharh At-Talqin* (Explanation of indoctrination), Vol. 2, p. 339.

45 The conditions of the people of Ifriqiyan countries got worse, whether they are manufacturers or farmers to the extent that they were poorly dressed because they were poor. That was because of their neighboring Arab Bedouin who usurped their money and sustenance (Al Hasan ibn Mohammad Al Wazzan Al Fasi, nicknamed as "Ifriqiyan Lyon" (died in about 1554 AD): *Description of Africa*, translated from Italian into French: Mr. Ebulhar, commented on it by: Mr. Ebolar and T. Mono and H. Lotte and R. Mooney, translated from French: Abdur-Rahman Himida, reviewed by Ali Abdul-Wahed, Egyptian General Book Organization, Cairo, 2005 AD, 2<sup>nd</sup> ed., p. 424.

46 Al Burzuli, *Jami' Al Masa'il Wal-Ahkam* (Collection of issues and judgments), Vol. 3, pp. 169 f.; Al Wansharisi, *Al Mi'yar Al Mu'rib*, Vol. 10, p. 436.

47 Al Hadi Rogi Idris, *The Senhaji State*, Vol. 2, p. 270.

48 Al Wansharisi, *Al Mi'yar Al Mu'rib*, Vol. 8, p. 205.

49 Al Hadi Rogi Idris, *The Senhaji State*, Vol. 2, p. 272.

50 *Ibid.*; It is noteworthy that the maritime commercial companies contracts emerged shortly before the advent of maritime loan contracts in current transactions between Genoa and Tunisia; Yves Renouard, *Les Hommes d'affaires italiens du Moyen Age*, Librairie Armand Colin, Paris 949, pp. 13 f.

#### 4.5 Proxy and its Guarantees in Commercial Contracts

Markets in the Maghreb were an area of business activity and seasonal occasions for sales contracts. The sources indicated that the idea of the proxy in commercial contracts was permissible according to the Maliki. Some of the principles that Al Maziri was keen to endorse in order to guarantee the rights of the contractors by proxy in an Ifriqiyān business environment were: That proxy implies a guarantee of the rights of the client by releasing his hand to act in the beneficial and harmful matters in general.<sup>51</sup> Those controls have contributed to reducing problems and issues between contractors and resolving outstanding issues in a manner that achieves the desired interest in order to facilitate transactions.

Al Maziri told us about an incident that occurred in 480 AH/1087 AD, when the Roman Sicilians conquered Zewaila and Mahdia, killed many of its people, and looted money from other homes, and many rivalries with the mortgaging manufacturers occurred. That happened in a country full of scholars, therefore all of them gave a fatwa that the mortgager and the manufacturer would bring their evidence that the mortgage in their custody was taken by the Romans.<sup>52</sup> According to this issue, some people were giving their money on speculative contracts.<sup>53</sup> When the scholars advised that the mortgagers and manufacturers should give evidence, Al Maziri gave a fatwa while he was under 30 that manufacturers shall be believed in their claims regarding the loss of people's money. The judge of that time adopted the fatwa of Al Maziri, and scholars neither gave a fatwa nor commented on this issue until two just witnesses came and witnessed before the judge that the imam of scholars in Afriqiya Abu Al Qasim Al Siyuri<sup>54</sup> had given a fatwa before in accordance with the fatawa of Al Maziri.<sup>55</sup> That fatwa was a remedy for the manufacturer and money traders whose rights, as well as the rights of the people, were lost in the mentioned Sicilian Roman invasion.

It was common in Ifriqiya markets even before the time of Al Maziri, that market intermediaries were selling clothing, animals and slaves in particular for others.<sup>56</sup> The proxy in the proxy of Salam sale (sale with advance payment) was permissible as it is permissible in other exchange contracts. The agent may say that he is just an agent for the client in the contract and the price should be asked from the principal or states clearly that he shall pay the price or does not state any of the two.<sup>57</sup> If proxy includes commercial transaction in cash, if he is authorized to sell a commodity, he may receive its price, and if he is authorized to pur-

51 Ahmad ibn Idris ibn 'Abdur-Rahman Al Maliki, known as Al Qarafi (1285 AD), *Adh-Dhakhirah* (Ammunition), verified by Mohammad Hajji, Dar Al-Gharb Al-Islamy, Beirut 1994, Vol. 8, p. 7.

52 Al Maziri, *Sharh At-Talqin* (Explanation of indoctrination), Vol. 2, pp. 413 f.

53 Speculation: A commercial contract whereby the owner of the money pays his money to another person who invests this money in a manufacture or trade, and the profit is shared between them, Abdullah Mu'asar, *Taqreeb Mu'jam Al Fiqh Al Maliki* (Simplifying the glossary of Maliki Fiqh Terms), p. 126.

54 Abu Al Qasim Abdul-Khalīq ibn Abdul-Warīth Al Maghribi As-Siyuri, the Shaykh of the Malikis, and the last Imam of Kairouan. One of the best-known examples of jurisprudence with asceticism. He was virtuous, ascetic and writer who had comments on Al Mudawanah and many imams received knowledge at his hand. He died in 460 AH/1068 AD at an old age (Ibrahim ibn Ali ibn Mohammad, Ibn Farhoun, Burhanuddin Al-Ya'muri (1397 AD): *Ad-Dibaj Al Mudh-dhahhab* (Garment decorated with gold), verified and commented by Mohammad El Ahmadi Abou El Nour, Heritage House for Printing and Publishing, Cairo, Vol. 2, p. 22).

55 Al Maziri: *Sharh At-Talqin* (Explanation of indoctrination), Vol. 3, part 2, pp. 413 f.; Al Wansharisi: *Al Mi'yar Al Mu'rib*, Vol. 8, pp. 327 f.

56 Al Wansharisi, *Al Mi'yar Al Mu'rib*, Vol. 8, pp. 199–212.

57 Al Maziri, *Sharh At-Talqin* (Explanation of indoctrination), Vol. 2, p. 92.



chase it and told the seller that he is just an agent for others, Al Maziri adopted the view that just by telling him that he is an agent for others or that he bought the commodity for others, he is still required to pay the price.<sup>58</sup>

If the buyer agent tells the seller that someone has sent him to buy an item, this does not release the agent from the price. The agent in this case is a buyer from the seller, so the seller does not care whether he would buy it for himself or for others.<sup>59</sup>

It was part of Al Maziri's jurisprudence in controlling the guarantee of transactions price by proxy that if the seller finds the dirhams forged, the agent shall not guarantee a replacement, but he shall be required to pay the money of the principal, if he told the seller that he only had bought it for someone else.<sup>60</sup>

#### 4.6 Human Rights Guarantees in Forced Commercial Contracts

Some events took place at the time of Al Maziri and many questions were raised about commercial sales contracts, and their fatwas have taken into consideration human rights, such as some popular views deemed the corruption of the sale contract during the call for Friday Prayer. However, we find that Al Maziri adopted the view that, despite the sanctity of Friday Prayer which requires total engagement to its rituals and the abandonment of all that occupies a person from it, especially sales contracts, the prohibition of sale during the call for Friday Prayer does not entail the corruption of the contract, taking into account the rights of people.<sup>61</sup>

## 5 Conclusion

The study focused on the subject of "Human Rights Guarantees in Commercial Contracts in Ifriqiya During the Time of Al Maziri, the Jurist (1061 1141 AD), a historical study on the fatwas". The purpose of the study was to show the extent to which human rights' guarantees have been achieved in the commercial contracts that took place in Ifriqiyian countries through the fatwas of Al Maziri, the jurist. The study showed the importance of that great jurist in redefining the course of economic life in Ifriqiya through his important fatwas that answered all questions related to that vital aspect of people's lives at that time.

In general, through this historical study a number of standards guaranteeing human rights were extracted, which Al Maziri was keen to emphasize in his answers to the questions received from the people in the field of commercial contracts during his time, as follows:

First: The criterion for emphasizing the values of commercial contracts, in order to deny fraud, cheating and deception, and protect those transactions from the doubts of usury and all transactions that would lead to injustice. In our estimation, the interest of the jurists in selling and affirming the guarantees of trade through contracts and the resulting guarantees of rights and compensations has protected the communities from usury and unjust loans, which were taken for a value that would not be used in trade and without leading to pursuit and gain.

<sup>58</sup> *Id.*, p. 93.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Ibn Bahadir Az-Zarkashi, *Al Bahr Al Muhit fi Usul Al Fiqh* (The surrounding sea on the fundamentals of jurisprudence), Vol. 3, p. 388.



Second: Compensation standard. Al Maziri was interested in deciding the principle of “compensation”, for which the commercial transactions were initiated. This principle is subordinated to a subordinate right, which is compensation, which the study touched upon in many events. Al Maziri showed a jurisprudential genius that contributed, during his time, to the control and rationalization of commercial contracts and achievement of justice, which is the goal of economy and the law in general.

Third: The standard of jurisprudential diversity, where the fatwas of Al Maziri on the new issues of commercial contracts have also combined views from other schools of Fiqh, which indicates that predominance of interest in the Ifriqiyān commercial environment has necessitated a cultural openness to the sources of other schools of Fiqh in addressing those issues.

Fourth: The interaction between the Fatwa and the Judiciary institutions during the time of Al Maziri and the extent of complementarity between both institutions in order to achieve justice in terms of the commercial environment. The great impact of Al Maziri’s fatwas was to renew the sources from which the judiciary institution draws its verdicts during that historic period, not only in Ifriqiya, but also in the Maghreb in general and in Andalusia.

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